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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRIT F. AUGBORNE, III,

Plaintiff,

v.

FILSON, et al.,

Defendants.

Case No. 3:17-cv-00393-MMD-CBC

**DEFENDANT'S MOTION FOR EXTENSION
OF TIME TO FILE RESPONSIVE
PLEADING**

Defendant Michael Stolk, by and through counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Joshua M. Halen, Deputy Attorney General, files this Motion for Extension of Time to File Responsive Pleading. This Motion is based on the following Memorandum of Points & Authorities, the papers and pleadings on file, and any additional information this Court chooses to consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LAW AND ARGUMENT

This is an inmate civil rights action brought by Plaintiff Brit Augborne ("Plaintiff"), pursuant to 42 U.S.C. § 1983 and the Eighth Amendment to the U.S. Constitution. The Court screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A and permitted Plaintiff to proceed with one Count against Defendants Correctional Officer Michael Stolk and Officer Hammond. (Screening Order 6:1-2, ECF No. 11.)

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On October 23, 2018, Plaintiff and Defendants' representatives participated in this Court's Inmate Early Mediation Conference; however, the parties did not reach a settlement at the Early Mediation Conference. (Report of the Office of the Attorney General Re: Results of the 90 Day Stay 2, ECF No. 18.) , On October 30, 2018, the Court issued its Order, granting Plaintiff's in forma pauperis application. (Order, ECF No. 19.) The Court ordered the Office of the Nevada Attorney General to file a notice advising the Court of the names of defendants for whom it accepted service for and the last known addresses for defendants it was not accepting service for. (*Id.*) The Court also ordered that if the Office of the Nevada Attorney General accepted service on behalf of any defendants, a responsive pleading was due within sixty days of the Order, or by December 31, 2018. (*Id.*)

On November 1, 2018, Plaintiff filed an Amended Complaint. (ECF No. 20.) In the Amended Complaint, Plaintiff named Warden Filson, Officer Stolk, CERT Officer Homan, John Doe Associate Warden of Operations ("AWO"), and John Doe # 1-10 as defendants. (Am. Compl. 2-3, ECF No. 20.) Plaintiff also named Officer Hammond (*id.* at 7), and James Dzurenda (*id.* at 8), as defendants. The Office of the Nevada Attorney General accepted service only on behalf of Defendant Michael Stolk. (ECF No. 21.) Contemporaneously with this Motion, Defendant Stolk filed a Request for the Court to Screen Plaintiff's Amended Complaint.

Based on Defendant's pending Request for the Court to Screen Plaintiff's Amended Complaint, Defendant requests that the time to file a responsive pleading be extended until after the Court rules on the Request to Screen. If the Court denies Defendant's Request to Screen, Defendant requests that he be provided twenty-one days from the date the Request to Screen is denied in which to file a responsive pleading.

Federal Rule of Civil Procedure 6(b)(1) governs enlargements of time and provides as follows:

When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or (B) on motion made after the time has expired if the party failed to act because of excusable neglect.

The proper procedure, when additional time for any purpose is needed, is to present a request for extension of time before the time fixed has expired. *Canup v. Miss. Val. Barge Line Co.*, 31 F.R.D. 282 (W.D. Pa. 1962). Extensions of time may always be asked for, and usually are granted on a showing of

1 good cause if timely made under subdivision (b)(1) of the Rule. *Creedon v. Taubman*, 8 F.R.D. 268 (N.D.
2 Ohio 1947).

3 Defendant seeks an extension of time to file a responsive pleading to either Plaintiff's Complaint
4 (ECF No. 12) or Plaintiff's Amended Complaint (ECF No. 20). Good cause exists to extend the time to
5 file this motion. Defendant has requested that Plaintiff's Amended Complaint be screened pursuant to 28
6 U.S.C. § 1915A. Defendant has requested the Court screen Plaintiff's Amended Complaint as he was not
7 provided leave to amend in the Screening Order, but has nonetheless filed an Amended Complaint that
8 seeks to re-introduce defendants and claims dismissed in the Screening Order. At this time, it is unclear
9 what allegations Defendant will be required to respond to via a responsive pleading. Additionally, it is
10 unclear which defendants this case will be proceeding against. Accordingly, this Request is being made so
11 as to provide the Court time to issue a decision on Defendant's Request to Screen and to clarify the issues
12 and defendants this case will be proceeding against. This request is made in good faith and is not for the
13 purposes of delay.

14 **II. CONCLUSION**

15 Based on the foregoing, Defendant respectfully requests this motion for extension of time be
16 granted and the deadline for filing a responsive pleading be extended.

17 DATED this 27th day of December, 2018.

18 ADAM PAUL LAXALT
19 Attorney General

20 By:

21 JOSHUA M. HALEN
22 Deputy Attorney General
23 State of Nevada
24 Bureau of Litigation
25 Public Safety Division

26 *Attorneys for Defendant*

27 IT IS SO ORDERED

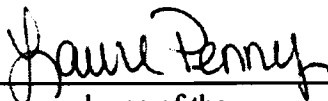
28 U.S. MAGISTRATE JUDGE

DATED: 2/6/2019

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 27th day of December, 2018, I caused to be deposited for mailing a true and correct copy of the foregoing, **DEFENDANT'S MOTION FOR EXTENSION OF TIME TO FILE RESPONSIVE PLEADING**, to the following:

Brit Augborne, III, #1145763
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070


An employee of the
Office of the Attorney General